consent, and such marriage was contracted without the consent of his or her parents.[6]

Marriage is a contract of the foremost importance, and though the state is concededly a party in interest, it is nevertheless deemed advisable not to disturb or set aside this contract because of a mere failure to observe all the formal requirements of the law. It seems to be well settled that at least the requirement of parental consent is not necessary to a valid marriage, though directed by the state law, unless that law expressly makes the marriage contract void because of the non-conformance.

H. L. K.

MINING LAW: INTEREST OF LOCATOR IN UNPATENTED MINING CLAIM: PASSES TO HEIRS BY DESCENT ON INTESTACY.—Does the interest of the locator of an unpatented mining claim who died intestate pass to his heirs by descent or can they only claim it as the beneficiaries designated by the United States? This was the sole question presented in the case of *Wallace v. Hudson.*[1] An attorney had represented to the plaintiff that she still possessed an interest in her deceased husband's unpatented mining claim and contracted to establish her title to it, which contract she sought to have cancelled. Previously the administrator of the estate had sold her said interest under probate sale in due course of administration. These probate sales conferred no title on the purchasers, it was contended, because an unpatented mining claim is a mere possessory interest in real property which does not pass to one's estate by descent but can only be claimed by the heirs as the donees or beneficiaries designated by the United States. The California Supreme Court held, however, basing its decision upon the authority of a former federal case,[2] that the possessory right of the locator of a mining claim is such an interest in real property as to pass upon his death to his heirs by descent. Such being the case it passed to the administrator for purposes of administration[3] and was subject to valid sale under order of the probate court.

The interest which the locator obtains in an unpatented mining claim differs from that which is acquired in the case of a pre-emption claim,[4] a donation claim[5] or a timber culture[6] entry. In these cases it has been held that the heirs do not take by descent from the deceased entryman. The congressional acts in each of these

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[6] People v. Souleotes (Jan. 13, 1915), 20 Cal. App. Dec. 79.

[1] (July 22, 1915), 50 Cal. Dec. 125.

[2] O'Connell v. Pinnacle Gold Mines Co. (1905), 140 Fed. 854.

[3] Cal. Code Civ. Proc. § 1581.

[4] Wittenbrock v. Wheadon (1900), 128 Cal. 150, 60 Pac. 664, 79 Am. St. Rep. 32.

[5] Hall v. Russell (1879), 101 U. S. 503, 25 L. Ed. 829; Hershberger v. Blewett (1892), 55 Fed. 170.

[6] Cooper v. Wilder (1896), 111 Cal. 191, 43 Pac. 591, 52 Am. St. Rep. 163.

cases designate the donee or beneficiaries of the entryman in the event of his death. The same thing would be true of a homestead claim, as the statutory provision with regard to the issuance of the patent after the death of the entryman is similar.[7] These claims are mere possessory rights or inchoate property interests which do not ripen into complete property rights until every act imposed by Congress for the acquisition of a patent thereto has been complied with. On the other hand the interest of the locator of a mining claim by the terms of the federal statutes[8] is looked upon as in the nature of a vested property right. And the courts have always treated such interests as an interest in the nature of a fee, looking upon the claimants thereof as owners as against all other persons but the United States.[9] Thus they have been held subject to taxes in the same manner as other real estate;[10] specific performance of an agreement to convey such an interest upon the acquisition of a patent thereto has been allowed so that it can be said to be freely transferable;[11] and execution sales thereof have been held to be valid.[12]

V. M. A.

NUISANCE: RIGHT OF RAILROAD TO MAINTAIN COAL DOCKS.—In *Smith* v. *Northern Pacific Railway Company*[1] the Supreme Court of Montana was confronted with the question whether a railroad company obtaining its right of way from the United States could be held liable by a subsequent grantee of the government for injury to his adjoining property from coal dust, noise, and smoke due to the operation without negligence of coal docks used to supply the company's engines. In deciding that the docks caused no legal nuisance to the plaintiff, the court failed to cite any case in which the cause of injury was coal docks or chutes or bins. The cases relied on were cases of the construction of additional tracks,[2] switches,[3] turntables,[4] and

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[7] U. S. Rev. Stat. §§ 2291, 2292.

[8] U. S. Rev. Stat. §§ 2322, 2324.

[9] Merritt v. Judd (1859), 14 Cal. 59; Hughes v. Devlin (1863), 23 Cal. 501.

[10] Forbes v. Gracey (1876), 94 U. S. 762, 24 L. Ed. 313.

[11] St. Louis Min. & Mil. Co. v. Montana M. Co. (1898), 171 U. S. 650, 43 L. Ed. 320, 19 Sup. Ct. Rep. 61.

[12] McKeon v. Bisbee (1858), 9 Cal. 137, 70 Am. Dec. 642; Phoenix Min. & Mil. Co. v. Scott (1898), 20 Wash. 48, 54 Pac. 777.

[1] (April 21, 1915), 148 Pac. 393.

[2] C. R. I. & P. Ry. v. Smith (1884), 111 Ill. 363; White v. Chicago, etc. R. R. Co. (1890), 122 Ind. 317, 23 N. E. 782, 7 L. R. A. 257; Hileman v. Chicago Ry. Co. (1901), 113 Iowa, 591, 85 N. W. 800; Louisville & N. R. R. Co. v. Scomp (1907), 124 Ky. 330, 98 S. W. 1024.

[3] Ill. Centr. Ry. Co. v. Anderson (1898), 73 Ill. App. 621.

[4] See note 3, supra.